IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.439 of 2000.
Date of Decision: 26th September, 2007.

State of H.P. …Appellant.

Vs.

Baldev Singh and others. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the appellant: Mr.M.A.Khan, Addl. Advocate General.

For the Respondents: Mr.Bimal Gupta, Advocate.

Sanjay Karol, J (Oral).

In terms of the present appeal, the judgment dated 1st March, 2000 passed by Chief Judicial Magistrate, Sirmour District at Nahan in Criminal Case No.29/2 of 1997 titled as State of H.P. Vs. Baldev Singh and others has been assailed whereby the accused persons have been acquitted of the charged offence under Sections 41 and 42 of the Indian Forest Act and under Section 379 of the Indian Penal Code.

As per the case of the prosecution, on 15th September, 1996 the forest patrolling party led by Sh. S.P.Singh (PW-1), Range Officer, Trilokpur, Nahan, H.P. at about 1.30 A.M. at a place known as Radiant Cement Factory found a tractor-trolley bearing No. PB-44-1498 parked and on seeing the patrolling party the accused persons ran away from the spot. After some chase accused Baldev Singh was

apprehended, who disclosed the name of the other accused persons who were sitting with him in the vehicle. Further upon checking, it was found that there were 11 logs of Sisham tree loaded in the vehicle and upon demand the accused persons failed to produce any export permit. The matter was reported to the Police vide complaint (Ext.PA) on the basis of which F.I.R. No.200/ 96 under Sections 41 and 42 of the Indian Forest Act (Ext.PW-6/A) was registered with Police Station, Nahan against the accused persons. During investigation it was found that the accused persons had felled two trees of Shisham from forest C-4 Jangla-wala-Bhood. One torch and saw for cutting the wood was also found in the vehicle.

After completing the investigation the challan was presented in the Court for trial and the charges against the accused persons under Sections 41 and 42 of the Indian Forest Act as also Section 379 I.P.C. were framed. The accused persons pleaded not guilty and claimed trial.

The prosecution, in all examined 11 witnesses and after the trial the statements of the accused persons under Section 313 Cr.P.C. were also recorded.

The court below acquitted all the accused persons on the ground that the statements of the witnesses were not worthy of credit inasmuch as there were inherent contradictions in their statements and there was nothing on

record to show that the accused persons had felled the trees from the forest.

I have examined the statements of the witnesses and also the material on record. The police party was led by Shri S.P.Singh (PW-1) and accompanied by Forest Guard Ajmer Singh (PW-2), Ashok Kumar (PW-4) and driver Rehman Khan (PW-3). The deposition of these witnesses is material as they are eye witnesses who have seen the occurrence of the alleged offence. The other witnesses are official in nature.

As per the version of PW-1 only three logs were found in the vehicle whereas PW-2, PW-3 and PW-4 have contradicted his statement to the effect that only 11 logs of timber were found loaded in the vehicle. Further only PW-2 has deposed that a torch, a saw and one pair of sleeper belonging to the accused were recovered vide recovery memo Ext.PB none of the other witnesses have mentioned about the same inspite of their being at the site. Further PW-2 who prepared the damage report (Ext.PD) does not state that the same was prepared after visiting the spot. The fact that the accused persons had felled the trees from the forest is not linked by any evidence on record. He nowhere stated that he visited the forest to ascertain this fact. Simply because some timber was allegedly found in the vehicle would itself not prove the guilt of the accused persons for an offence under

Section 379 I.P.C. The witnesses are forest officials and interested in the success of the prosecution case. No independent witness has been involved. However, their statements have to be scrutinized with caution to see as to whether the case of the prosecution is proved beyond reasonable doubt. Importantly, none of the witnesses have stated that they had visited the forest to see as to whether any tree had been felled from the forest concerned. In the absence of the same, no credence can be given to the damage report prepared by the witness.

The owner of the vehicle Sh.Kuldip Singh (PW-5) has also not supported the case of the prosecution inasmuch as he has stated that the vehicle in question was parked outside his house and the keys were lying with him. If the vehicle was parked outside his house and the keys were lying with him then the involvement of the vehicle itself is in doubt.

In my view, the court below has correctly appreciated the material on record while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 26, 2007(R)